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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,895

07/19/2005

Carina Sacha Snijder

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8425

23117 7590 10/15/2007  
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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,895	<b>Applicant(s)</b> SNIJDER ET AL.	
	<b>Examiner</b> Ula C. Ruddock	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/20/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I in the reply filed on August 10, 2007, is acknowledged.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitt et al. (US 6,669,706). Schmitt et al. disclose multifilament surgical support mesh exhibiting improved resistance to inhabitation of bacteria and other infectious matter (col 1, ln 14-17). Schmitt discloses prior art wherein the surgical mesh comprises polyethylene (col 1, ln 55). The surgical mesh can be knitted and is produced from multifilament yarns (col 1, ln 28-36). The multifilament yarns can be bicomponent yarns composed of a sheath and core (col 6, ln 9-12). The yarns are encapsulated within a matrix that provides an infection-impervious barrier (col 5, ln 19-31). A medicinal substance is incorporated into the matrix encapsulating the yarns (col 7, ln 7-12). Schmitt et al. disclose the claimed invention except for the teaching that the polyethylene yarn has a tensile strength of more than 1.0 GPa, a relative viscosity of more than 5 dl/g, and that the yarn is formed of a sheath and core having a weight ratio between the sheath and core of below 5:1 or 3:1.

Although Schmitt et al. do not disclose the tensile strength property and relative viscosity property, it is inherent to presume that these properties are inherent to the polyethylene yarns of Schmitt et al. Support for said presumption is found in the use of like materials (i.e. multifilament, bicomponent polyethylene yarns). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In addition, the presently claimed property of a polyethylene yarn having a tensile strength of more than 1.0 GPa, a relative viscosity of more than 5 dl/g would obviously have been present once the Schmitt et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Finally, in the absence of unexpected results, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the weight ratio between the sheath and core be below 5:1 or 3:1, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. In the present invention, one would have made the weight ratio between the sheath and core be below 5:1 or 3:1, motivated by the desire to create a mesh material that has the desired pliability and structural integrity.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C. R./

/Ula C Ruddock/  
Primary Examiner, Art Unit 1794